

REMARKS

This responds to the Office Action mailed on October 16, 2008.

Claim 1 is amended, no claims are canceled, and no claims are added; as a result, claims 1, 3-10 and 31 are now pending in this application. No new matter has been added and support for the claim amendment may be found in the specification at least at page 4, lines 24-28

§103 Rejection of the Claims

Claims 1, 3-4, 6, 9-10 and 31 were rejected under 35 U.S.C. §103(a) as being unpatentable over Lee et al. (U.S. Patent No. 6,687,154) in view of Yang et al. (U.S. Patent No. 6,678,190). Applicant respectfully traverses this rejection.

The Office Action states that Lee suggests forming a 2T cell having a Flash transistor and a mask ROM transistor (abstract; figures 4, 7A-D; col. 4, lines 1-10; col. 6, lines 11-22). Lee has a ROM transistor formed by shorting the floating gate to the control gate, which does not suggest that “the two cells inherently have the same footprint and the same area footprint” as noted by the Examiner. Applicant notes that the present claims have a ROM transistor with a single conductive layer electrode, which is different than Lee’s dual gate 71 and 72 as seen in Figure 7. The Examiner admits on page 3 second paragraph that Lee does not describe or suggest a single conductive layer electrode when forming the ROM transistor cells, and does not suggest the same footprint as the non-volatile user programmable memory transistor cells.

The Office Action contends that Yang suggests a plurality of mask programmed read-only memory cell formed from a single layer electrode. However, Applicant respectfully submits that the cited reference fails to describe or suggest at least the claimed feature of a “...a non-volatile memory transistor including at least one area having a gate oxide layer region disposed near a diffused region with a thickness less than a second gate oxide thickness disposed over a channel region and a first select transistor...”, as recited in amended independent claim 1. Although Lee may suggest a two layer electrode, there is no suggestion in either reference for a poly electrode dip. Thus amended base claim 1 is non-obvious over Lee and Yang..

The dependent claims are asserted to be patentable at least as depending from a base claim shown above to be patentable over the cited reference, whether taken alone or in any combination with other well known art, since any claim depending from a nonobvious independent claim is also nonobvious. See M.P.E.P. § 2143.03. In view of the above noted claim amendments and discussion of the failure of the cited references to describe or suggest at least the above features, Applicant requests this rejection under 35 U.S.C. § 103(a) be reconsidered and withdrawn.

Reservation of Rights

In the interest of clarity and brevity, Applicant may not have equally addressed every assertion made in the Office Action, however, this does not constitute any admission or acquiescence. Applicant reserves all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicant does not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner's personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicant timely objects to such reliance on Official Notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicant reserves all rights to pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's representative at (612) 349-9587 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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Date

January 16, 2009

By

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on January 16, 2009.

Name

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Signature

[Signature]